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9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
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12
13 DARREN FULLER,

14 Plaintiff,

15 v.

16 FEDERAL BUREAU OF PRISONS,

17 Defendant.
18

Case No. ED CV 14-0065 JLS (MRW)

**ORDER DISMISSING ACTION
WITH PREJUDICE**

19 The Court vacates the reference of this action to the Magistrate Judge and
20 dismisses the action with prejudice for failure to prosecute.

21 * * *

22 This is a pro se civil rights action. Plaintiff formerly was an inmate at the
23 federal prison at Victorville. Following his release from custody, Plaintiff filed
24 this action alleging that the prison improperly used race-based factors to allocate
25 housing and other assignments. According to the complaint, Plaintiff sought
26 injunctive relief from the Court to compel the prison to stop using these criteria.
27 (Docket # 3 at 4-8.)
28

1 The government moved to dismiss the complaint. After considering the
2 parties' briefs on the motion and conducting a hearing in early July 2014,
3 Magistrate Judge Wilner granted the dismissal motion. Judge Wilner concluded
4 that, because Plaintiff was no longer in custody, the injunctive claim was moot and
5 could not lead to relief. (Docket # 33.)

6 Notably, at the hearing and in the written decision, Judge Wilner directly
7 informed Plaintiff that he could file an amended complaint to attempt to allege a
8 viable cause of action. (*Id.* at 4.) The Court gave Plaintiff until August 15 to do
9 so. Judge Wilner further advised Plaintiff that the Court could dismiss the action
10 in its entirety under Federal Rule of Civil Procedure 41 for failure to prosecute if
11 Plaintiff did not file a timely amended complaint to proceed with the case. (*Id.* at
12 5.) According to the Court's docket, however, Plaintiff has not filed an amended
13 complaint (or any other document) since the hearing on the dismissal motion.

14 * * *

15 Rule 41(b) provides that if a plaintiff "fails to prosecute or to comply with
16 these rules or a court order, a defendant may move to dismiss the action or any
17 claim against it." Dismissal also may be ordered by the Court *sua sponte*. *Link v.*
18 *Wabash R.R.*, 370 U.S. 626, 629-30 (1962). Dismissal of a civil action under
19 Rule 41 may be appropriate to advance the public's interest in the expeditious
20 resolution of litigation, the court's need to manage its docket, and to avoid the risk
21 of prejudice to defendants. *Omstead v. Dell, Inc.*, 594 F. 3d 1081, 1084 (9th Cir.
22 2010). Additionally, a court should consider the public policy favoring disposition
23 of cases on their merits and the availability of less drastic alternatives in its
24 evaluation. *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988).

25 In the present action, the Court finds dismissal of the action is appropriate.
26 The Court gave Plaintiff a clear explanation as to why it granted the motion to
27 dismiss the action and a deadline by which to file an amended complaint. *James v.*
28

1 Giles, 221 F.3d 1074, 1077 (9th Cir. 2000) (pro se litigant ordinarily entitled to
2 opportunity to amend deficient pleading). That deadline expired several months
3 ago. Plaintiff's failure to revise his complaint demonstrates that he has no interest
4 in advancing the action here.

5 By contrast, the Court, the government, and the public have a strong interest
6 in terminating this moot action. The Court finds that dismissal is appropriate under
7 Rule 41(b). Furthermore, because Plaintiff is a pro se (but non-custodial) litigant
8 who did not abide by the Court's clear instruction regarding the amendment of his
9 complaint, no sanction short of dismissal will be effective in moving this case
10 forward. Carey, 856 F.2d at 1440.

11 Accordingly, for the above reasons, this action is DISMISSED with
12 prejudice. Fed. R. Civ. P. 41(b) (dismissal under rule ordinarily "operates as an
13 adjudication on the merits").

14 IT IS SO ORDERED.

15
16 Dated: December 2, 2014



HON. JOSEPHINE L. STATON
UNITED STATES DISTRICT JUDGE